

1 Access service but wishes to switch to a CLEC for voice service must first cancel
2 his DSL/Internet Access service with his ISP; the ISP will then cancel its DSL
3 service with Verizon's ILEC. Verizon is then free to switch the end-user over to
4 the CLEC for voice communications. If the end-user wishes to continue receiving
5 DSL/Internet Access, he may purchase that service from the CLEC (or from the
6 CLEC's ISP partner).

7
8 **Q. IS MR. MAZERSKI CORRECT THAT REQUIRING THE END-USER TO**
9 **CANCEL HIS OR HER DSL SERVICE IS INTENDED TO "ENSURE**
10 **THAT COMPETITIVE LOCAL EXCHANGE CARRIERS WILL BE**
11 **DISADVANTAGED" (MAZERSKI P. 25)?**

12 A. No. The requirement has the effect of providing notice to the end-user that
13 switching to the CLEC for voice service will result in a brief interruption in its
14 DSL service. As a result, this process gives the end-user the ability to plan ahead.

15
16 **Q. ARE DSL, DRL AND DSL-BASED HIGH SPEED INTERNET ACCESS**
17 **INTRASTATE PRODUCTS THAT, AS MR. MAZERSKI SUGGESTS,**
18 **ARE SUBJECT TO THE REGULATION OF THIS COMMISSION**
19 **(MAZERSKI PP. 30-38)?**

20 A. No. Although I am not lawyer, I have been advised, and it is my understanding,
21 that DSL and DSL-based high-speed Internet access are both interstate products
22 that are not within the jurisdiction of this Commission.

1 First, it is my understanding that stand-alone DSL transmission (and, by
2 extension, DRL) is an interstate telecommunications service -- more specifically,
3 a "special access" service -- that is subject to an FCC tariff. The terms and
4 conditions of that service are set forth exclusively in that FCC tariff, and may not
5 be varied by state regulation. The communications transmitted using Verizon's
6 DSL product travel from the end-user's computer, through Verizon's DSL
7 network, and onto an ISP's Internet backbone. From there, they can terminate at
8 any location on the Internet's worldwide network of computers. Using Verizon's
9 DSL product, an end-user is able to instantaneously communicate with computers
10 located all over the world. Considered on an end-to-end basis, such
11 communications are largely interstate and international in nature. Accordingly,
12 the FCC has concluded that "ADSL service is a special access service . . .
13 warranting federal regulation." Memorandum Opinion and Order, *GTE Tel.*
14 *Operating Cos.*, 13 FCC Rcd 22466, ¶¶ 16, 25 (1998).

15
16 Second, it is my understanding that DSL-based high-speed Internet access service
17 is an unregulated, interstate "information service"¹ offered directly by Verizon to
18 end-users. For more than thirty years, the FCC has consistently held that
19 interstate information services should remain free from federal and state

¹ The 1996 Act defines an "information service" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." 47 U.S.C. § 153(20).

1 regulation. The federal courts have upheld this exercise of preemptive authority.²
2 In asking the Commission to assert its regulatory authority over either DSL
3 service or DSL-based high-speed Internet access, Mr. Mazerski is asking this
4 Commission to undertake a significant (and unauthorized) expansion of its
5 jurisdiction without demonstrating any basis for such an extreme step and without
6 even engaging in the business discussions that would allow CloseCall to obtain
7 the line-shared resold DSL service that it claims to want.
8

9 **Q. IS VERIZON'S POSITION IN THIS PROCEEDING CONSISTENT WITH**
10 **THE PENNSYLVANIA AND CONNECTICUT SECTION 271**
11 **PROCEEDINGS MR. MAZERSKI MENTIONS IN HIS TESTIMONY**
12 **(MAZERSKI P. 37)?**

13 A. Yes. Verizon's position in this proceeding is fully consistent with my
14 understanding of the FCC's decisions in Pennsylvania and Connecticut Section
15 271 proceedings. In those proceedings, the FCC ordered Verizon to make any
16 retail DSL service available to CLECs at a wholesale discount over the same

² For instance, I have been informed that in the *Computer II Further Reconsideration Order*, the FCC made clear that its decisions served to preempt any state regulation of enhanced services (which are now known as information services). See 88 F.C.C.2d at 541, ¶ 83 n.34. The D.C. Circuit upheld this exercise of preemptive authority on petitions, explaining that "[f]or the federal program of deregulation to work, state regulation of CPE and enhanced services ha[ve] to be circumscribed." *Computer & Communications Indus. Ass'n v. FCC*, 693 F.2d 198, 206 D.C. Cir. 1982). See also *id.* at 214 (expressing agreement with FCC determination "that preemption of state regulation is justified . . . because the objectives of the *Computer II* scheme would be frustrated by state tariffing of CPE"). Accordingly, that court held, "state regulatory power must yield to the federal." *Id.* at 216; see also *People of California v. FCC*, 39 F.3d 919, 932 (9th Cir. 1994) (recognizing that state regulation of interstate information services would "essentially negat[e] the FCC's goal").

1 loops those CLECs use to provide voice service to their customers. *See*
2 Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., et al.*
3 *for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16
4 FCC Rcd 17419, 19470, ¶ 93 (2001); Memorandum Opinion and Order,
5 *Application of Verizon New York Inc., et al., for Authorization To Provide In-*
6 *Region InterLATA Services in Connecticut*, 16 FCC Rcd 14147, 14161, ¶ 30
7 (2001). As I have already indicated, Verizon provides DSL (or, more properly,
8 DRL) service at a wholesale discount on loops used by CLECs to resold voice
9 services in Maryland.

10
11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 **A. Yes.**

VERIZON MARYLAND INC.

REBUTTAL TESTIMONY OF RICHARD J. McCUSKER, JR.

CASE NO. 8927

SEPTEMBER 24, 2002

VERIZON MARYLAND INC.

REBUTTAL TESTIMONY OF RICHARD J. McCUSKER, JR.

CASE NO. 8927

SEPTEMBER 24, 2002

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Richard J. McCusker, Jr. I am the Director of Retail Messaging for Verizon. My business address is 125 High Street, Room 479, Boston, MA 02110.

Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL BACKGROUND AND YOUR EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.

A. I received a Bachelor of Science degree from Boston College in 1977. I received a Masters in Business Administration from Suffolk University in 1979. I have worked in the telecommunications industry for 23 years. I have held my current position as Director of Retail Messaging for Verizon for 4 years. Before that, I worked as a Director of Complex Voice Services for 2 years.

Q. PLEASE PROVIDE AN OVERVIEW OF YOUR TESTIMONY.

A. My testimony will describe Verizon's voice messaging product and explain why, contrary to the arguments made by Mr. Mazerski on behalf of CloseCall America, Inc. ("CloseCall"), this Commission should not impose regulatory requirements in the highly competitive market for voice messaging service. I will also address,

1 and rebut, Mr. Mazerski's claim that this Commission has authority to regulate
2 interstate information services such as voice messaging. Mr. Mazerski does not
3 discuss the relevant Federal Communication Commission ("FCC") and federal
4 precedents that establish that this Commission has no such authority. Finally, I
5 will explain that, while a few state commissions have required Verizon to resell
6 voice messaging service, many state commissions have rejected similar requests.

7
8 **Q. WHAT IS VERIZON'S VOICE MESSAGING SERVICE?**

9 A. Verizon's voice messaging service is a product that allows a person calling a
10 Verizon customer to leave a recorded message for the Verizon customer if that
11 customer does not answer the phone. If someone dials the number of a Verizon
12 voice messaging customer and the Verizon customer fails to answer the phone or
13 the line is busy, the caller is automatically forwarded to Verizon's voice-
14 messaging system, which prompts the caller to leave a recorded message for the
15 Verizon customer. The Verizon customer retrieves her messages by dialing into
16 the voice messaging system.

17
18 **Q. IS VERIZON'S VOICE MESSAGING SERVICE A STAND-ALONE**
19 **RETAIL PRODUCT AS CLOSECALL SUGGESTS?**

20 A. No. Voice messaging is an additional feature that Verizon makes available to its
21 local exchange voice customers. Verizon does not market or sell its voice
22 messaging as a stand-alone retail service.

1 **Q. ARE THEY ANY REASONS WHY THIS COMMISSION SHOULD**
2 **REGULATE VOICE MESSAGING?**

3 A. Absolutely not. There are a number of reasons why this Commission should not
4 accept CloseCall's invitation to regulate voice messaging services.

5
6 First, Mr. Mazerski has not demonstrated any problem that needs fixing. For
7 instance, although Mr. Mazerski claims (at pages 9-10, 14-15) that CloseCall has
8 experienced a significant technical problem in converting Verizon voice
9 messaging customers to CloseCall service, CloseCall's own discovery responses
10 demonstrate that this has occurred in only thirteen instances over 2 years, or for
11 about 0.1% of CloseCall customers. This issue, and the related fact that CloseCall
12 has never raised this complaint through established business channels, is
13 discussed in the testimony of Terry Charlton.

14
15 Second, as discussed in detail in the testimony of Dr. William Taylor, residential
16 and business customers in fact have many choices for voice messaging.
17 Numerous CLECs offer voice messaging in Maryland, and most customers obtain
18 their voice messaging functionality from other products, such as increasingly
19 sophisticated home answering machines.

20
21 Mr. Mazerski is thus asking this Commission to go well beyond established law to
22 impose broad regulatory obligations on Verizon without demonstrating any
23 market problem that needs correction. Mr. Mazerski is simply seeking a business

1 advantage by being able to obtain voice messaging from Verizon at regulated
2 rates, instead of obtaining such service on the open market, as other carriers have
3 done.

4
5 **1. Lightyear Agreement**

6 **Q. MR. MAZERSKI REFERS IN HIS TESTIMONY (AT PAGE 20) TO A**
7 **VERIZON AGREEMENT WITH LIGHTYEAR TO RESELL VOICE**
8 **MESSAGING SERVICES. ARE YOU AWARE OF THAT AGREEMENT?**

9 A. I am.

10
11 **Q. COULD YOU PLEASE DESCRIBE THAT AGREEMENT.**

12 A. The agreement with Lightyear prohibits Verizon from divulging its content to
13 third parties "except if [Verizon is] required to do so by applicable law."
14 Accordingly, I am not at liberty to discuss the specific terms of that agreement. I
15 can say, however, that it is my understanding that the agreement with Lightyear
16 has not been a successful business proposition for Verizon. Verizon has thus
17 made the business decision not to repeat its failed venture with Lightyear and has
18 not entered into any such agreements recently.

1 **2. Commission Authority To Regulate Voice Messaging**

2 **Q. HAVE YOU REVIEWED MR. MAZERSKI'S TESTIMONY ON THIS**
3 **COMMISSION'S ALLEGED AUTHORITY TO REGULATE VOICE**
4 **MESSAGING?**

5 A. Yes I have.

6
7 **Q. IS MR. MAZERSKI CORRECT THAT THE COMMISSION HAS THE**
8 **AUTHORITY TO ORDER VERIZON TO PROVIDE ITS COMPETITORS**
9 **WITH WHOLESALE ACCESS TO VERIZON'S VOICE MESSAGING**
10 **SERVICE (AT 35-38)?**

11 A. No, he isn't. I am not an attorney, but I have been informed, and it is my
12 understanding, that Verizon's voice messaging service is an interstate information
13 service that the FCC has established may not be regulated by the states.

14
15 **Q. WHY IS VOICE MESSAGING AN INTERSTATE SERVICE?**

16 A. It is my understanding that voice messaging is an interstate service because it is
17 frequently used as part of communications that, on an end-to-end basis, are
18 interstate. Verizon voice messaging subscribers can and do obtain access to their
19 voice messaging account from any telephone, whether in-state or out-of-state.
20 Likewise, Verizon voice messaging subscribers can and do receive messages from
21 both in-state and out-of-state callers. As the FCC recognized when it considered
22 BellSouth's voice messaging service in its *BellSouth MemoryCall Order*:

23 [W]hen a caller is connected to [Verizon's voice messaging
24 service], receives instructions and/or a message, and records a

1 message, there is a continuous two-way transmission path from the
2 caller location to the voice mail service. When the caller is out-of-
3 state, there is a continuous path of communications across state
4 lines between the caller and the voice mail service, just as there is
5 when a traditional out-of-state long distance voice telephone call is
6 forwarded by the local switch to another location in the state and
7 answered by a person, a message service bureau or customer
8 premises answering device.¹
9

10 This continuous transmission between the caller and the actual voice messaging
11 apparatus cannot be broken down into constituent interstate and intrastate
12 components. The Verizon voice messaging system treats all callers identically,
13 regardless of their location. Anyone in the world calling into that voice
14 messaging-equipped customer's phone can be transferred to the voice messaging
15 system. And once that occurs, there is a single communication between the caller
16 (wherever she is located) and the voice messaging apparatus (in Maryland).
17

18 **Q. WOULD IT BE ECONOMICALLY FEASIBLE TO PROVIDE VOICE**
19 **MESSAGING SEPARATELY ON INTERSTATE/INTRASTATE BASES?**

20 A. No. No user of voice messaging would want to have two mailboxes, one for
21 intrastate calls and another for interstate. It is not a practical solution in the
22 market. I am not aware of any provider that offers separate voice messaging for
23 interstate and intrastate communications.

¹ Memorandum Opinion and Order, *Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corp.*, 7 FCC Rcd 1619, 1620, ¶ 9 (1992).

1 **Q. WHY IS VOICE MESSAGING AN INFORMATION SERVICE?**

2 A. It is my understanding that voice messaging is an information service because it
3 involves the storage, retrieval, and manipulation of information. The
4 Communications Act, as amended by the Telecommunications Act of 1996,
5 defines an “information service” as the “offering of the capability for generating,
6 acquiring, storing, transforming, processing, retrieving, utilizing, or making
7 available information via telecommunications.” 47 U.S.C. § 153(20). The FCC
8 expressly concluded in the *Second Louisiana Order*, 13 FCC Rcd at 20781, ¶ 314,
9 that voice messaging was an information service.

10

11 **Q. IN THE *SECOND LOUISIANA ORDER*, DID THE FCC DETERMINE**
12 **WHETHER ILECS COULD BE REQUIRED TO RESELL VOICE**
13 **MESSAGING?**

14 A. Yes it did. The FCC concluded that, because voice messaging is an information
15 service, not a telecommunications service, federal law did not mandate resale of
16 voice messaging.²

² *Second Louisiana Order*, 13 FCC Rcd at 20780-81, ¶ 314.

1 **Q. HAS THE FCC DETERMINED MORE GENERALLY WHETHER**
2 **STATES CAN REGULATE INTERSTATE INFORMATION SERVICES**
3 **SUCH AS VOICE MESSAGING?**

4 A. Yes. Although I am not a lawyer, it is my understanding that the FCC has held
5 that information services should remain free from federal *and* state regulation.
6 The federal courts have upheld this exercise of preemptive authority.³

7

8 **Q. HAS THE FCC EVER PREEMPTED A STATE’S ATTEMPT TO**
9 **REGULATE VOICE MESSAGING BECAUSE IT IS AN INTERSTATE**
10 **INFORMATION SERVICE?**

11 A. Yes, in the *BellSouth MemoryCall Order*, the FCC preempted a state commission
12 decision because it was an improper attempt to regulate the provisioning of voice
13 messaging, which the FCC held to be an interstate information service.

³ For instance, I am informed that, in the *Computer II Further Reconsideration Order*, the FCC made clear that its decisions served to preempt any state regulation of enhanced services (which are now known as information services). See Memorandum Opinion and Order on Further Reconsideration, *Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, 88 F.C.C.2d 512, 541 n.34 (1981). The D.C. Circuit upheld this exercise of preemptive authority, explaining that “[f]or the federal program of deregulation to work, state regulation of CPE and enhanced services ha[ve] to be circumscribed.” *Computer & Communications Indus. Ass’n v. FCC*, 693 F.2d 198, 206 (D.C. Cir. 1982). Accordingly, that court held, “state regulatory power must yield to the federal.” *Id.* at 216; see also *People of California v. FCC*, 39 F.3d 919, 932 (9th Cir. 1994) (recognizing that state regulation of interstate information services would “essentially negat[e] the FCC’s goal”).

1 **Q. DOES MR. MAZERSKI ADDRESS ANY OF THESE DECISIONS IN**
2 **CONCLUDING THAT THIS COMMISSION HAS AUTHORITY TO**
3 **TAKE THE EXTRAORDINARY STEP OF REQUIRING RESALE OF AN**
4 **INTERSTATE INFORMATION SERVICE?**

5 A. No, he does not.

6

7 **Q. HAVE ANY STATE COMMISSIONS REFUSED TO REQUIRE VERIZON**
8 **TO PROVIDE ITS VOICE MESSAGING SERVICE ON A WHOLESALE**
9 **BASIS?**

10 A. Yes. The Massachusetts, Virginia, and Connecticut state commissions have
11 refused to require Verizon to provide its voice messaging service on a wholesale
12 basis.⁴

⁴ *See Complaint of RCN Telecom Servs. of Mass., Inc.*, No. 97-101 (Mass. Dep't of Telecom. & Energy Nov. 9, 1998) ("*RCN Mass. Complaint*"); Order Resolving Non-Pricing Issues, *Petition of MCI Telecommunications and MCImetro Access Transmission Services of Virginia, Inc.*, Case No. PUC960113 (Va. Corp. Comm'n May 8, 1997); Decision, *Application of New York Telephone To Withdraw Voice Messaging Service to Residence and Small Business*, No. 98-02-21 (Conn. Dep't of Pub. Util. Control Mar. 25, 1998). The Massachusetts commission reasoned that, because voice messaging was an information service (and not a telecommunications service) it lacked jurisdiction to require Verizon to provide voice messaging on a wholesale basis. *See RCN Mass. Complaint* at 6-11.

1 **Q. HAVE OTHER STATE COMMISSIONS ALSO DECLINED TO REQUIRE**
2 **THAT ILECS RESELL VOICE MESSAGING SERVICES?**

3 A. Yes, it it my understanding that many commissions have refused to do so.

4 Among those are the state commissions in Illinois, Ohio, Arizona, Nevada,

5 Nebraska, Utah, North Carolina, and Washington.⁵

⁵ See Order, *AT&T Communications of the Midwest, Inc.*, 1997 WL 1055198, *7 (Neb. Pub. Serv. Comm'n Apr. 14, 1997) ("We agree with GTE that the features of voice mail are not required to be offered for resale. Pursuant to the Act, resale services are those offered at retail to end users.") (citation omitted); Opinion and Order, *AT&T Communications of Ohio*, 1997 Ohio PUC LEXIS 324, *40, § 26.7 (Ohio Pub. Utils. Comm'n May 1, 1997) ("AT&T proposes language which requires GTE to provide voice mail functionalities [as a resale service]. GTE states that neither the 1996 Act, nor the Commission's Arbitration Award, obligates GTE to provide voice mail services. GTE points out that AT&T and GTE have agreed on language . . . which requires GTE to provide unbundled voice mail features and functions. The Commission agrees with GTE that AT&T's proposal is not reasonable and, therefore, AT&T's proposed language shall not be included in the executed contract to be submitted to the Commission for approval."); Arbitration Order, *AT&T of the Mountain States, Inc.*, 1998 WL 855420, *31 (Utah Pub. Serv. Comm'n Apr. 28, 1998) ("[W]e conclude that our decision turns on whether or not inside wire maintenance and voice mail are deemed 'essential facilities and services,' as defined [by state statute]. We previously concluded and now affirm that they are not. Neither service rises to the level of being essential insofar as they can be reasonably duplicated, are not necessary for AT&T/MCI to provide public telecommunications services, and represent services for which economic alternatives exist in terms of quality, quantity and price."); Decision No. 60043, *GST Tucson Lightwave Inc.*, 1997 WL 153781, *6 (Ariz. Corp. Comm'n Feb. 5, 1997) ("Voice mail and inside wire maintenance are not telecommunications services, and also are presently available on the open market. Neither voice mail nor inside wire maintenance is a type of service which the Act was designed to make available to CLECs. It is not necessary for U S WEST to offer voice mail or inside wire maintenance to GST for resale."); Arbitration Decision, *MCI's Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Central Telephone Company of Illinois*, No. 96 AB-009, 1997 Ill. PUC LEXIS 61, *40 (Ill. Commerce Comm'n Feb. 5, 1997) ("Voice Mail does not fall within the Act's definition of a telecommunications service. Voice Mail is predominantly a service that involves the recording of information that has been sent through the use of a telecommunications service. Thus, it does not have to be made available for resale at this time."); Arbitration Order, *AT&T Communications of Nevada, Inc.*, Docket No. 97-5014, ¶ 85 (Nev. Pub. Serv. Comm'n Aug. 28, 1997) ("Because voice mail services involve the storage and retrieval of information which is accessed 'via telecommunications,' the Commission

1 **Q. HAVE ANY STATE COMMISSIONS ORDERED VERIZON TO**
2 **PROVIDE ITS VOICE MESSAGING SERVICE ON A WHOLESALE**
3 **BASIS?**

4 A. Yes. While state commissions in New York, Rhode Island, and Vermont have
5 required Verizon to provide voice messaging service on a wholesale basis, there
6 are important differences between each of those cases and this one. In New York,
7 the Commission apparently did not consider the argument that voice mail is an
8 interstate information service over which the PSC has no jurisdiction. Moreover,
9 the New York Public Service Commission's decision focuses exclusively on
10 voice service provided via the UNE-P and did not deal with CLECs, such as
11 CloseCall, who provide voice service over resold lines. As the New York
12 Commission made clear in its order on rehearing, to the extent that Verizon must
13 make voice mail available for resale, that is because Verizon must allow all its
14 retail tariffed services in New York to be resold.⁶ The Rhode Island Commission

finds that voice mail is an 'information service' and thus, Nevada Bell has no obligation under the Act to provide such service to AT&T for resale."); Slip op., *AT&T Communications of the Southern States, Inc.*, Docket No. P-140, Sub 51, Issue No. 23 (N.C. Utils. Comm'n July 3, 1997) ("[V]oice mail is not a telecommunications service under the Act . . . such service is thus not subject to resale."); Commission Order Modifying Arbitrator's Decision and Arbitrator's Recommendations, and Approving Interconnection Agreement with Modifications, *AT&T Communications of the Pacific Northwest, Inc.*, 1997 Wash. UTC LEXIS 49, *22-*23, ¶ 14 (Wash. Utils. & Transp. Comm'n July 11, 1997) ("Voice mail is an enhanced service, and not a telecommunications service. Although voice mail is often bundled with telecommunications services, it is not involved in the transmission of information. Insofar as voice mail is not part of the transmission of information by the public switched telephone network, it is not a 'telecommunication service' as defined in federal law.").

⁶ Order on Rehearing at 8, *Joint Petition of AT&T Communications of New York, Inc.*, Case No. 01-C-0095 (New York Pub. Serv. Comm'n Dec. 5, 2001). Delaware also

1 asserted that, unlike in this case, both parties had agreed that the FCC had not
2 preempted state authority over voice messaging services.⁷ However, Verizon
3 Rhode Island has appealed that decision and the Rhode Island Supreme Court has
4 stayed it pending resolution of the appeal. In Vermont, the state commission
5 wrongly failed to account for the fact that federal law prevented it from regulating
6 interstate information services.⁸

7
8 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

9 **A. Yes, it does.**

requires Verizon to provide its voice messaging service on a wholesale basis, but that requirement was imposed pursuant to state statute, not Commission action.

⁷ See Report and Order, *Petition of Eastern Telephone, Inc. Requesting Verizon Rhode Island to File a Tariff Provision Allowing for the Resale of Voice Messaging Service* at 7, Docket No. 3333 (R.I. Pub. Utils. Comm'n Dec. 31, 2001).

⁸ See Order on Motion for Reconsideration, *Joint Petition of New England Telephone & Telegraph Co. d/b/a NYNEX, et al.*, Docket No. 5900 (Vt. Pub. Serv. Bd. Jan. 31, 2000), *aff'd*, *In re Petition of Verizon New England Inc. d/b/a Verizon Vermont*, No. 2000-118 (Vt. Feb. 22, 2002).

VERIZON MARYLAND INC.

REBUTTAL TESTIMONY OF WILLIAM E. TAYLOR

CASE NO. 8927

SEPTEMBER 24, 2002

VERIZON MARYLAND INC.

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1 VERIZON MARYLAND INC.

2 REBUTTAL TESTIMONY OF WILLIAM E. TAYLOR

3 CASE NO. 8927

4 SEPTEMBER 24, 2002

5
6
7 **I. INTRODUCTION**

8 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS ADDRESS.**

9 A. My name is William E. Taylor. I am Senior Vice President of National Economic Research
10 Associates, Inc. (NERA), head of its telecommunications economics practice, and head of
11 its Cambridge office. My business address is One Main Street, Cambridge, Massachusetts
12 02142.

13 **Q. PLEASE SUMMARIZE YOUR QUALIFICATIONS.**

14 A. I have been an economist for over thirty years. I received a B.A. degree in economics
15 (Magna Cum Laude) from Harvard College in 1968, a master's degree in statistics from the
16 University of California at Berkeley in 1970, and a Ph.D. in Economics from Berkeley in
17 1974, specializing in industrial organization and econometrics. I have taught and published
18 research in the areas of microeconomics, theoretical and applied econometrics, and
19 telecommunications policy at academic institutions (including the economics departments
20 of Cornell University, the Catholic University of Louvain in Belgium, and the
21 Massachusetts Institute of Technology) and at research organizations in the
22 telecommunications industry (including Bell Laboratories and Bell Communications
23 Research, Inc.). I have testified on telecommunications economics before numerous state
24 regulatory authorities, the Federal Communications Commission, the Canadian Radio-
25 Television and Telecommunications Commission, federal and state congressional

1 committees and courts concerning incentive regulation, productivity, access charges,
2 mergers, antitrust issues and pricing for economic efficiency. A copy of my vita listing
3 publications and testimonies is shown as Attachment 1.

4 **Q. HAVE YOU TESTIFIED BEFORE THE PUBLIC SERVICE COMMISSION OF**
5 **MARYLAND?**

6 A. Yes. I have testified before the Public Service Commission of Maryland (“PSC” or
7 “Commission”) on a number of issues including: pricing and regulatory treatment of
8 interconnection to permit competition for local service (Case No. 8584); pricing of
9 interconnection among competing local exchange carriers (Case No. 8659);
10 reclassification of telecommunications services (Case No. 8715); access charge and
11 universal service issues (Case No. 8745); and costing and pricing of interconnection and
12 unbundled network elements (Case Nos. 8731-II and 8879).

13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A. Verizon Maryland Inc. (“Verizon MD”) has asked me to discuss the economic principles
15 involved in the complaint filed by CloseCall America, Inc. (“CloseCall”), alleging
16 anticompetitive tying of Verizon MD’s residential and small business local exchange
17 service with Verizon’s voice messaging (“VM”) and broadband Internet access (“DSL”) services.
18 CloseCall is requesting that Verizon MD be required to sell its VM and DSL
19 service to CloseCall local exchange customers or to resell those services at a discount to
20 CloseCall.

21 **Q. WHAT ARE YOUR CONCLUSIONS?**

22 A. The complaint has no economic merit. Competition in Maryland’s local exchange,
23 broadband, and voice messaging markets—along with competitors and customers—would
24 each be harmed if Verizon MD were required to sell VM or DSL services to CloseCall’s
25 local exchange customers or to resell those services at a discount to CloseCall. There are
26 several reasons for this. First, the markets for VM and broadband Internet access are

1 competitive in Maryland. Customers throughout Maryland have a wide choice of products,
2 services, technologies and suppliers that they can use to receive VM and high speed
3 Internet access functions. Hence, contrary to CloseCall's claims, the fact that CloseCall's
4 residential local exchange customers cannot purchase Verizon MD's VM and broadband
5 access services doesn't unfairly disadvantage CloseCall in the market for residential local
6 exchange customers because CloseCall's customers have a wealth of competitive
7 alternatives available to them.

8 Second, the competitive *processes* in the VM, broadband access and residential and small
9 business basic exchange markets in Maryland would be harmed if CloseCall's complaint is
10 successful before the Commission. Asymmetric regulation distorts competition, and under
11 CloseCall's proposal, only one of many competitors in the VM and high speed Internet
12 access markets (Verizon MD) would be compelled to supply services to customers it would
13 find unprofitable to serve. The 1996 Act defines a narrow set of circumstances in which an
14 incumbent local exchange carrier must supply complete services to its competitors at a
15 wholesale discount, and those circumstances do not apply here. From an economist's
16 perspective, requiring Verizon MD to supply these services to competitors or to
17 competitors' customers would:

- 18 • distort and reduce competition for VM and broadband access services. Other suppliers
19 of VM and broadband access products and services would face reduced demand. There
20 would be less competition among local exchange companies offering bundled services
21 if compulsory resale made it attractive for all of them to offer *identical* Verizon MD
22 VM and broadband access services.
- 23 • distort technological choices. Discounted, mandatory supply of Verizon MD's services
24 would result in a reduction in the demand for answering machines, answer service
25 bureaus, cable modem service and satellite service.
- 26 • reduce Verizon MD's incentives to invest and innovate. Investment in new broadband
27 plant and equipment or in cutting-edge unified voice messaging services would be
28 reduced if Verizon MD were required to share the benefits from providing such services
29 with its local exchange competitors.
- 30 • inject regulation of prices (and other terms and conditions) into competitive markets for
31 information services. There is vigorous competition in these markets, which has

1 sparked low prices, rapid technical change and valued new services. Re-regulation of
2 VM and broadband access markets would likely undo these successes.

3 Consumers would face a wider choice in the market for bundles of telecommunications and
4 related services if every supplier were free to supply ancillary services such as VM or
5 broadband access rather than forcing Verizon MD to supply discounted services to
6 competitors or unprofitable services to competitors' customers. Extending the force of
7 regulation into markets where competition has been an undisputed success would harm
8 rather than help the process of competition and ultimately Maryland telecommunications
9 customers.

10 Third, CloseCall's proposal is impractical: if adopted, where should the line be drawn?
11 Verizon MD supplies many services to its basic exchange customers: some it supplies on an
12 add-on basis to those customers (e.g., vertical services such as call-waiting or call-
13 forwarding, VM, DSL, toll, inside wire maintenance, calling cards) and some are supplied,
14 directly or through its affiliates, to anyone (e.g., cellular service, dial-up Internet access,
15 Yellow Pages advertising). Some services can be provided on a stand-alone or "naked"¹
16 basis (e.g., cellular services) but the customer may be eligible for lower prices if the service
17 is combined in a package with basic wireline exchange service. Other competitors have
18 made similar business decisions. In this competitive environment, the Commission must be
19 extremely careful when asked to specify services that must be provided on a resale or naked
20 retail basis by the ILEC.

21 For an economist, the basic principle the Commission should use to determine which of
22 Verizon MD's services should be made available on a resale or mandatory naked retail
23 basis is whether such a regulation would make customers better off. Customers are
24 generally made better off when all of the services they purchase are supplied in markets that
25 are as competitive as possible. Asymmetric regulatory actions intended to neutralize in one

¹ General industry terminology refers to services that a carrier provides to *all* customers as "naked" services—as opposed to those it supplies only as an add-on service to its presubscribed customers. Thus, Verizon MD or its affiliates provide naked cellular, Yellow Pages advertising, dial-up Internet access and operator services but Verizon MD does not supply naked call-forwarding, inside wire maintenance, calling cards, VM or DSL services. Specialized long distance companies may supply operator services and calling cards to their presubscribed customers but not to other carriers' presubscribed customers.

1 market any advantage a party may have gained in a different competitive market ultimately
2 makes consumers worse off. All firms bring competitive advantages and disadvantages to
3 the local exchange marketplace, and the regulator cannot hope to improve consumer
4 welfare by refereeing the process by which consumers get to choose: i.e., by negating some
5 competitive advantages and permitting others. AT&T (and CloseCall) in Maryland can
6 supply long distance service to local customers. Verizon MD cannot. MCI (with its
7 Neighborhood offering) supplies VM service to its local customers in Maryland. Verizon
8 MD can, but CloseCall claims that it cannot. Verizon MD, too, supplies ancillary services
9 to its local exchange customers, and, like AT&T, CloseCall, and MCI, Verizon MD
10 determines on a business-case basis whether it will provide ancillary services on a stand-
11 alone basis or make them available to other local exchange carriers' customers.

12 Fourth, CloseCall's complaint doesn't make any economic sense. Verizon MD cannot
13 unfairly enhance its competitive position in the basic exchange market by failing to supply
14 VM and DSL services to CloseCall's customers because CloseCall's customers have a
15 choice:

- 16 • they can (and do) obtain VM services ubiquitously throughout Maryland by means of
17 answering machines, standalone VM providers, telecommunications carriers who
18 bundle VM with their basic service offerings, wireless carriers and Internet-based VM
19 and Unified Messaging services, and
- 20 • they can (and do) obtain broadband Internet access service ubiquitously throughout
21 Maryland by means of cable modems, alternative DSL providers, fixed wireless,
22 satellite services and other wireline technologies.

23 In other words, Verizon MD's business practices do not constitute anticompetitive tying.
24 Verizon MD has no market power in the VM or broadband access markets in Maryland and
25 thus no prospect of profiting from attempting to force VM or DSL customers to take its
26 residential or small business local exchange services as a condition of buying Verizon
27 MD's VM or DSL service. Thus, CloseCall cannot claim competitive harm from Verizon
28 MD's business practices because CloseCall's basic exchange customers have many
29 alternatives to Verizon MD's VM and broadband access services.